

97CV7061-AL-MO

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSEPH LABOSCO,

Plaintiff,

97 CV 7061 (RR)

-against-

Memorandum and
ORDER

UNITED STATES,

Defendant.

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A P P E A R A N C E S

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JOSEPH LABOSCO
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clm

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EASTERN DISTRICT OF NEW YORK

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By: Elisa L. Liang, Esq.

Attorneys for Respondent

RAGGI, District Judge:

On August 21, 1998, this court denied Joseph Labosco's motion, made pursuant to 28 U.S.C. § 2255, to vacate his federal conviction for conspiracy to traffic in kilogram quantities of drugs. See Labosco v. United States, 90 CR 494 (August 21, 1998). Labosco now moves for reconsideration of this decision and requests that this judge recuse herself from further involvement in his case.

Labosco cites to a single sentence in the court's August 21, 1998 memorandum and order to support his motion for recusal. That sentence states: "The verdict against Labosco was returned in his absence, petitioner having fled the courthouse on the last day of jury deliberations after attempts to tamper with the jury proved unsuccessful." Id. at p. 2. Labosco argues that this sentence constitutes a "venomous misrepresentation of the record" insofar as it links Labosco to the attempted jury tampering. See Labosco Memorandum in Support of Motion for Recusal, p. 2. Preliminarily, the court notes that judicial recusal is rarely warranted when, as in this case, a defendant can cite to no information

or events outside the record that contribute to the alleged judicial bias. See Liteky v. United States, 510 U.S. 540, 551, 114 S.Ct. 1147 (1994). Judicial opinions formed in the course of court proceedings, even if hostile to a party, do not warrant recusal “unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Id.* at 555. That is not this case.

First, the court’s statement does not misrepresent the record. It accurately reports that the verdict against Labosco and his codefendants was returned only after two noteworthy events: first, an attempt to tamper with the jury, followed later the same day by Labosco’s flight from the courthouse. Nowhere does the court state that Labosco was responsible for the attempted tampering.

Further, the sentencing minutes reveal that the court specifically declined to hold Labosco accountable for the jury tampering despite the prosecution’s argument that this was warranted in light of certain evidence discovered at Labosco’s residence after his flight. Able defense counsel -- whose

competency is challenged by Labosco in his § 2255 motion -- argued that the seized evidence did not support the inferences urged. This court concluded that, although the cited evidence was troubling, it was not sufficient, by itself, to support a finding that Labosco had attempted to obstruct justice.

While I cannot say that there's no evidence here to cause the Court to be concerned, I'm not going to attribute the jury tampering to Mr. Labosco. There is nothing that happened in this trial as disturbing to the Court as the attempt by someone to influence this jury. Three women on this jury, over the Thanksgiving break, were sent notes and envelopes of money. Two of them discovered them before Friday when they deliberated. One discovered it only after the jury had concluded its deliberations.

But in any event, this was an attempt to intimidate and frighten members of this jury. The fact that it was likely done by someone who was either a defendant in this case or associated with a defendant in this case seems highly likely. But I cannot say by a preponderance of the evidence that it was Mr. Labosco, and so I won't factor it into his sentencing.¹

Sentencing Transcript, August 8, 1992, pp. 54-55. The court decided not to explore the issue further at a hearing, however, because it found the otherwise

¹Labosco's counsel is simply wrong in her assertion that the court found by a preponderance of the evidence that Labosco had not attempted to tamper with the jury. See Labosco Memorandum in Support of Motion for Recusal, p.2.

applicable guideline range sufficiently high to do justice in the case. Id. at 56. Under these circumstances, there is no reason to think that this judge holds an unfairly hostile view of Mr. Labosco based on the jury tampering incident that makes it impossible for her to render a fair decision on the motion for reconsideration. The motion to recuse is denied.


The court has reviewed Labosco's motion for reconsideration and the government's papers in opposition. It remains convinced for the reasons stated in its August 13, 1998 Memorandum and Order that Labosco's request for relief pursuant to 18 U.S.C. § 2255 is untimely. Reconsideration is denied.

To the extent that it appears that Labosco wishes to preserve and

pursue his right to appeal, the clerk of the court is hereby ordered to enter his notice of appeal.

SO ORDERED.

Dated: Brooklyn, New York
October 23, 1998


REENA RAGGI
UNITED STATES DISTRICT JUDGE